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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/032,893	02/27/1998	JOHN O. BIESER	41824B	1428

23859 7590 01/20/2006
NEEDLE & ROSENBERG, P.C.
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/032,893

Applicant(s)

BIESER ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,9-12 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,9-12 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on October 26, 2005, has been entered.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on October 26, 2005, has been considered by the examiner.

Drawings

3. The drawings were received on October 26, 2005. These drawings are unacceptable due to the omission of labeling as "Replacement Sheet."

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A

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replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 3-6, 9-12, 15, and 16 stand rejected under 35 USC 103(a) as being unpatentable over US 6,344,515 issued to Parikh et al. in view of US 5,545,276 issued to Higgins and US 5,240,530 issued to Fink, for the reasons of record.

6. Claim 17 stands rejected under 35 USC 103(a) as being unpatentable over the cited Parikh patent in view of the cited Higgins and Fink patents as applied to claims 1 and 16 above, and in further view of US 5,741,594 issued to Jialanella, for the reasons of record.

7. Claims 1, 3-6, 9-12, 15, and 16 are rejected over US 5,545,276 issued to Higgins and US 5,240,530 issued to Fink in view of US 5,272,236 and US 5,278,272 issued to Lai et al for the reasons of record.

8. Claim 17 is rejected under 35 USC 103(a) as being unpatentable over the cited Higgins, Fink, and Lai patents as applied to claims 1 and 16 above, and in further view of US 5,741,594 issued to Jialanella for the reasons of record.

9. Claims 1, 3-6, 9-12, 15, and 16 stand rejected under 35 USC 103(a) as being unpatentable over US 6,472,042 issued to Dibbern et al. in view of US 5,545,276 issued to Higgins and US 5,240,530 issued to Fink.

Dibbern discloses a filled thermoplastic composition useful as a backing for automotive carpet comprising at least one ethylene/ α -olefin interpolymers and filler (abstract). The interpolymers can be a homogeneously branched linear ethylene polymer (HBEP) or a substantially linear polymer (SLEP) having the presently claimed melt flow ratio, molecular weight distribution, and critical shear rate (col. 4, lines 7-31). When no other components are added, the filled thermoplastic composition comprises 5-60% by weight of the interpolymers and 40-95% filler (col. 3, lines 15-23 and col. 4, lines 1-6). In other words, the presently claimed

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limitation that the HBEP is about 80 to about 99% by weight based upon the total weight of the polymer component is met by the teachings of Dibbern. Dibbern also discloses carpets having an extruded backside coating of said filled thermoplastic composition (col. 3, lines 28-36 and col. 13, lines 7-9).

Thus, Dibbern teaches the claimed invention with the exception of the claimed carpet structure. Since Dibbern is silent with respect to a structure of a carpet for which the inventive composition is suited, one must look to the prior art for guidance on how to employ an adhesive composition with a carpet.

Conventional carpets are comprised of a primary backing, tufts therein, an optional precoat, an adhesive backcoat, and an optional secondary backing. Additionally, the precoat or the adhesive backcoat, in the absence of any precoat, penetrates into the primary backing and the tufts in order to secure said tufts in said primary backing. For example, Higgins teaches known prior art tufted carpet comprise a primary carpet fabric having tufts therein and an adhesive layer, which comprises either a latex or hot melt adhesive, for holding said tufts in place (col. 1, lines 23-33 and col. 5, lines 59-67). The adhesive layer can be a hot melt adhesive such as those well known in the art (col. 6, lines 25-33). The tufts or face yarns may be made of nylon, polyester, or polyolefins, such as polyethylene and polypropylene (col. 6, lines 14-24).

Similarly, Fink teaches known prior art tufted carpets include face fiber tufted through a primary backing and an adhesive backcoat "in order to secure the face fiber to the primary backing" (col. 1, lines 12-24). Historically, the adhesive backcoats have been of a latex (col. 1, lines 24-26 and lines 52-63). However, a known alternative to latex backcoats are hot melt adhesive backcoats (col. 2, lines 4-23). Said hot melt adhesives have sufficient flow (i.e., low

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enough viscosity) to wet and penetrate the backing surfaces and tuft stitches (i.e., encapsulate) (col. 2, lines 23-30 and 55-64). A particular hot melt adhesive is chosen on its suitability in adhering the tufts to the primary backing (col. 3, lines 22-29). The face fibers or tufts may be made of nylon, polyester, or polypropylene (col. 8, lines 14-24), while the primary backing may be a woven or nonwoven fabric of jute, polypropylene, nylon, or polyester (col. 1, lines 37-43).

Thus, it would have been obvious to employ the adhesive composition of Dibbern as an adhesive backcoat in known carpet structures comprising a tufted primary backing and, optionally, a secondary backing, such as those taught by Higgins and Fink. Motivation to do so is found in the explicit teachings of Dibbern that said composition is suited as a backcoating for carpet, but the lack of a teaching to a particular carpet structure.

With respect to the claimed tuft bind strength, it is asserted that a known carpet structure, such as that taught by Higgins and Fink, having the Dibbern composition as a backcoat would meet the tuft bind strength limitation, since the carpet of the combination of art meets all the structural and chemical limitations of the claim. In other words, "Products of identical chemical composition can not have mutually exclusive properties." *In re Spada*, 15 USPQ2d 1655.

With respect to claim 9, a carpet having polypropylene face yarns, a polypropylene primary backing, and the Dibbern backing would meet the limitation that the adhesive composition has a different olefin chemistry than the face fibers or primary backing. Regarding the label recitation of claim 9, it is noted that the 'recyclable representation of the label or literature' is not given patentable weight at this time because the words or symbols written on a label or literature are not structural limitations of the claimed carpet. Additionally, applicant is hereby given Official Notice that labels and/or literature are included with commercial carpets

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for sale in the United States. Thus, it would have been obvious to one skilled in the art to include a label or literature on the carpet having the Dibbern backing. Furthermore, it is noted that Dibbern teaches the backcoated carpets can be recycled (col. 12, lines 27-33). Therefore, claims 1-6, 9-12, 15, and 16 are rejected as being obvious over the cited prior art.

10. Claim 17 is rejected under 35 USC 103(a) as being unpatentable over the cited Dibbern, Higgins, and Fink patents as applied to claims 1 and 16 above, and in further view of US 5,741,594 issued to Jialanella.

The prior art discussed above does not explicitly teach a secondary backing comprising a homogenously branched ethylene polymer having a SCBDI of greater than or equal to 50%. However, Jialanella discloses a laminate material comprising a the claimed polymer. As asserted by applicant in previous discussions, Jialanella teaches said laminate material as a secondary carpet backing. Thus, it would have been obvious to one skilled in the art to employ the Jialanella secondary backing for the secondary backing of the Dibbern, Higgins, and Fink prior art carpet, with the expectation of producing a carpet having improved delamination resistance and good recyclability. Therefore, claim 17 is rejected over the cited prior art.

Response to Arguments

11. Applicant's arguments filed on October 26, 2005, have been fully considered but they are not persuasive.

12. Applicant traverses the first rejection based upon the combined art of Parikh, Higgins, and Fink by asserting that the rejection is improper due to its reliance upon the claims of the Parikh patent (Amendment, pages 7-8). Specifically, applicant cites *In re Benno*, 226 USPQ 683

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as holding “unambiguous[ly] that the claims of a patent do not constitute prior art” (Amendment, page 7, 1st paragraph). The examiner respectfully disagrees. First, it is unclear to the examiner how the court’s holding is “unambiguous” since nowhere in the decision is this actually stated. To the contrary, *Benno* teaches the “a claim is part of the disclosure” of a specification even when a claim discloses something not disclosed in the body of said specification (*Benno*, paragraph spanning pages 686-687). Secondly, the issues of *Benno* are not commensurate with the present application. The claim at issue in *Benno* does not disclose any structure additional to what the specification disclosed (*Benno*, paragraph spanning pages 686-687). In other words, what the court held was that a claim cannot be extrapolated to be broader than what is disclosed by the specification. In the present case, the examiner is not reading structure that does not exist into the claim, but rather the limitation relied upon for the rejection is explicitly recited in the claim. Therefore, applicant’s argument is unpersuasive and the above rejection is deemed proper.

13. Applicant also traverses the rejection by asserting the phrase “reasons of record” amounts to an “omnibus rejection” (Amendment, page 8, section (ii)). MPEP 707.07(d) states the following:

An omnibus rejection of the claim ‘on the references and for the reasons of record’ is stereotyped and usually not informative and should therefore be avoided. This is especially true where certain claims have been rejected on one ground and other claims on another ground.

A plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.

Thus, the examiner’s rejection is not technically an “omnibus rejection” since the Office Action clearly separates which claims are rejected over which art. Additionally, each claim limitation has been previously addressed in detail rather than merely grouping claims together under a

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broad heading. In the prior and present Office Actions, “reasons of record” is employed to indicate that the reasons of rejection have been previously set forth in prior Office Action(s) and that said rejections are reincorporated therein. Thus, this argument is unfounded.

14. Applicant also traverses the Parikh based rejection by asserting that the reference does not teach the HBEP or SLEP polymers independently possess adhesive properties (Amendment, pages 9-10, section (v)). First, as previously argued it is well known in the art that thermoplastic adhesives can function as adhesives. Note, contrary to applicant’s statement, this is not equivalent to “contending that ALL thermoplastic polyolefins are suitable for use as hot melt adhesives” (Amendment, page 9, 2nd paragraph). Additionally, Parikh teaches the HBEP polymer is suited for use in an adhesive composition. The reference need not explicitly teach the polymer independently possess adhesive properties since this is not commensurate in scope with the claimed invention.

15. Regarding applicant’s argument that it would not have been obvious to modify Parikh’s ranges without the teaching of the claims (Amendment, pages 10-12, section (vi)), this argument is unpersuasive since the claims are properly relied upon for the rejection. In other words, applicant cannot exclude a teaching from the reference to suit their purpose. The claims of a patent are part of the printed document that is available to one skilled in the art as available prior art under 35 USC 102.

16. With respect to applicant’s argument that the principal of operation of the Parikh invention would be altered by the proposed modification (Amendment, pages 12-13, section (vii)), it is reiterated from prior Office Actions, that such a modification would not destroy the intent of the Parikh reference since the minimum requirements of 5% base polymer and 5%

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tackifier would be met. Additionally, it is noted that applicant still has not established any criticality for the claimed lower limit of “about 80%.” As such, it is held that the cited limitation cannot serve to patentably distinguish the present invention from the prior art.

17. Applicant also argues that the Office Action is reading the Parikh reference out of its context (Amendment, page 13, section (viii)). For the reasons set forth in section 8.4 of the Office Action dated 12/16/2004, the examiner respectfully disagrees that the reading is “selective” and not supported when the disclosure is read as a whole.

18. In response to applicant’s assertion that the Parikh reference does not provide a “clear and particular” teaching or suggestion of the use of the compositions as a backcoat type adhesive (Amendment, pages 13-14, section (ix)), Parikh teaches hot melt adhesive compositions that can be extruded onto substrates such as carpet backings. In the carpet art, one of ordinary skill in the art readily understands this teaching to mean an adhesive backcoat. Note the teachings of the Higgins and Fink references which teach the conventional use of hot melt adhesives extruded onto tufted primary backings. Applicant contests the examiner’s “noting” of Higgins and Fink and of what is “conventional” in the art (Amendment, page 14, 1st paragraph). The notation the examiner is referring to is the explicit teachings of the two references as applied in the original rejection of the claims and as reiterated in the above Dibbern, Higgins, and Fink rejection, section 9 of the current Office Action.

19. Regarding applicant’s assertion that Parikh presents no reasonable expectation of success that the compositions may be used as backcoat adhesives (Amendment, page 15, section (x)), the examiner respectfully disagrees. Specifically, there is nothing on record establishing *the compositions of Parikh* will not function in this manner. Table A of Fink is descriptive of the

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suitability of the polymers as an extruded sheet of the Fink invention in general and of the bond strength to polypropylene. Additionally, the polyethylene compositions of Fink's Table A are not the same as those disclosed by Parikh. One cannot extrapolate the teachings of Table A to all polyethylene polymers, especially HBEP or SLEP.

20. Applicant asserts Parikh is not analogous prior art since it drawn to pressure sensitive adhesives (Amendment, pages 15-16, section (xi)). In response, it is reiterated from the prior Office Actions that Parikh explicitly teaches the inventive adhesive may also be a hot melt adhesive.

21. Regarding applicant's continued assertion that Fink was cited in error since applicant overcomes the teachings of Fink with the phrase "wherein the adhesive composition is not integrally fused to the primary backing material" (Amendment, page 16, section (xii)), the examiner maintains that the rejection is correct. As previously stated, Fink is not relied upon for its inventive "integrally fused" adhesive backcoat and primary backing, but rather its teachings of what is known in the art (e.g., conventional carpet construction and adhesive backcoat compositions).

22. Applicant also argues that the secondary references do not supply the carpet or tile aspects of the present claims (Amendment, pages 17-18, section (xiii)). In response, it is argued that most adhesive backcoats are not integrally fused to the primary backing material. This is an inventive feature of the Fink patent. Since, Fink is not relied upon for this invention and since the other references do not explicitly teach integral fusion, one can assume that the backcoats are not integrally fused. Additionally, the prior art need not explicitly teach the claimed tuft bind property. Like materials cannot have mutually exclusive properties.

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23. Section (xiv), page 18 of the Amendment asserts that Fink teaches away from the presently claimed “not integrally fused.” It is repeated that Fink is not relied upon for its teaching of the inventive integrally fused backcoat, but rather for its teaching of what is convention in the art.

24. Applicant asserts the combination of art improperly relies upon alleged inherent features for the basis of the obviousness rejection (Amendment, pages 18-19, section (xv)). It is not improper to assert that a product of the prior art having like chemical and structural features as the present invention would inherently possess like physical properties. This logic is not circular or legally improper. Rather, like materials cannot have mutually exclusive properties. The tuft bind strength is a result of the structure and chemistry of the carpet. If the prior art meets the chemical and structural features of the present claims, it must also meet the physical properties recited. If not, then applicant’s claim is incomplete and subject to a rejection under 112.

25. Applicant asserts the examiner ignored the data demonstrating that “all hot melt type adhesive are not created equal” (Amendment, page 19, section (xvi)). The data was not previously ignored, it was irrelevant since the examiner never contended that “all hot melt type adhesives are created equal.”

26. Applicant also argues the examiner improper takes from Parikh a description of an improvement as the motivation to modify those compositions (Amendment, page 20, section 1). The arguments presented in section 14(a) of the Office Action dated 12/16/04 address this traversal. Additionally, applicant argues the examiner failed to show why an improvement in tack and modulus would be relevant to an adhesive backcoat composition (Amendment, page 20, section 1). In response, Parikh explicitly teaches the interpolymers are added to extend the

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adhesive composition and to improve the modulus and tack of the adhesive. It seems that these properties would be beneficial to adhesive compositions in general, including adhesive backcoat compositions.

27. Applicant asserts Parikh's pressure sensitive adhesive would not be suitable for use as claimed by applicant's (Amendment, page 20, section 2). Applicant also asserts that the examiner did not counter this argument in the last Office Action (Amendment, page 20, section 2). To the contrary, the examiner stated, "Yet again, the examiner points out Parikh is not limited to pressure sensitive adhesives." The reference clearly teaches extruded hot melt adhesives which is suitable for use as presently claimed.

28. Applicant also continues to assert the examiner fails to address the recited aspects of "substantially penetrated and substantially consolidated" (Amendment, page 20, section 3). As noted in the 12/16/04 Office Action, these recitations were specifically addressed in section 4 of the Office Action mailed August 7, 2003. For applicant's convenience, the relevant section is reprinted below:

Conventional carpets are comprised of a primary backing, tufts therein, an adhesive backcoat, and an optional secondary backing. Additionally, the adhesive backcoat penetrates into the primary backing and the tufts in order to secure said tufts in said primary backing. For example, Higgins teaches known prior art tufted carpet comprise a primary carpet fabric having tufts therein and an adhesive precoat layer, which comprises either a latex or hot melt adhesive, for holding said tufts in place (col. 1, lines 23-33 and col. 5, lines 59-67). The adhesive precoat can be a hot melt adhesive such as those well known in the art (col. 6, lines 25-33). The tufts or ace yarns may be made of nylon, polyester, or polyolefins, such as polyethylene and polypropylene (col. 6, lines 14-24).

Similarly, Fink teaches known prior art tufted carpets include face fiber tufted through a primary backing and an adhesive backcoat "in order to secure the face fiber to the primary backing" (col. 1, lines 12-24). Historically, the adhesive backcoats have been of a latex (col. 1, lines 24-26 and lines 52-63). However, a known alternative to latex backcoats are hot melt adhesive backcoats (col. 2, lines 4-23). Said hot melt adhesives have sufficient flow (i.e., low enough viscosity) to

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wet and penetrate the backing surfaces and tuft stitches (i.e., encapsulate) (col. 2, lines 23-30 and 55-64). A particular hot melt adhesive is chosen on its suitability in adhering the tufts to the primary backing (col. 3, lines 22-29). The face fibers or tufts may be made of nylon, polyester, or polypropylene (col. 8, lines 14-24), while the primary backing may be a woven or nonwoven fabric of jute, polypropylene, nylon, or polyester (col. 1, lines 37-43).

Thus, the limitation of “substantially penetrates and substantially consolidates” is conventional in the art for backcoat adhesives as evidenced by the Higgins and Fink references.

29. Regarding the rejection of claim 17 over Parikh, Higgins, Fink, in further view of Jialanella, applicant present no new arguments (Amendment, pages 20-21, section B).

30. With respect to the rejection over Higgins and Fink in view of the Lai patents, applicant traverses the rejection by asserting Fink teaches “‘conventional’ hot melt adhesive do not work as adhesive backcoats” (Amendment, page 21, section C, 2nd paragraph). To the contrary, Fink discloses hot melt adhesives are known in the art as adhesive backcoats and teaches requirements of said adhesive that render it suitable for backcoats (e.g., activation temperature, low enough viscosity, etc.). Fink also explicit cites other patents that employ hot melt adhesive backcoats (col. 2, line 65-col. 3, line 46). Fink does admit that there are problems with some hot melt adhesive backcoats (col. 3, lines 47-68), this is no way a teaching that “‘conventional’ hot melt adhesive do not work as adhesive backcoats.”

31. Applicant also asserts that since Higgins provides no details as to what and how hot melt adhesives can be used as adhesive backcoats the reference does not support the rejection (Amendment, page 21, section C, 3rd paragraph). To the contrary, Higgins teaches the adhesive coat can be a hot melt adhesive such as those well known in the art. Since said adhesive are well known in the art, the reference need not provide details. Thus, the rejection is properly supported by Higgins.

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32. Applicant argues that the references cannot be combined since neither Higgins nor Fink teach HBEP can be used as an adhesive backcoat (Amendment, paragraph spanning pages 21-22). In response, the primary references need not explicitly teach HBEP as an adhesive backcoat. If they did, the rejection would be a 102 anticipation rejection rather than a 103 obviousness rejection. There is sufficient motivation to combine the references based upon Higgins' and Fink's general teaching of hot melt adhesives for adhesive backcoats and the Lai patent's specific teaching of known hot melt adhesives.

33. Applicant argues that the logic in the rejection regarding the tuft bind strength ignore the requirement that the references can be combined (Amendment, page 22, 2nd paragraph). In response, the examiner maintains that the references are properly combinable as discussed above.

34. With respect to the Official Notice given in the rejection of the label limitations, applicant does not specifically traverse said Official Notice but rather reiterates that the rejection "cannot be sustained" for other reasons (Amendment, page 22, 3rd paragraph). Since the examiner has maintained the rejection for the reasons set forth above, it is presumed that applicant concedes the Official Notice set forth in the rejection regarding the label limitations.

35. Regarding rejection of claim 17 over Higgins, Fink, the Lai patents and in further view of Jialanella, applicant presents no new arguments. Hence, said rejection is also maintained.

Conclusion

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

37. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHEYL A. JUSKA
PRIMARY EXAMINER

cj
January 9, 2006